91-47

Supreme Court, U.S.
FILED
MAY 24 1991
OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

EDWIN E. FORSMAN,
SUSAN M. FORSMAN - PETITIONERS

vs.

DISTRICT OF COLUMBIA - RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Edwin E. Forsman,
Susan M. Forsman
Pro Se
4436 West Taro Drive
Glendale, Arizona 85308
Tel. 602-581-2837

QUESTIONS PRESENTED

1) Does the "Public Duty Doctrine" insulate the Government from liability if agents of the Government have instructed negligent third parties to cross onto privately held property to seize and take property belonging to the owners and residents of that property, without notice to, and without the knowledge or consent of the property owners and residents, in violation of the common law (Trespass) and the Fourth Amendment to the U.S. Constitution?

2) Does the "Public Duty Doctrine" apply if agents of the Government act in Joint Trespass with negligent third parties, and the Trespass makes useless a Patent Owner's rights under Article I: Section 8 (8) of the U.S. Constitution?

3) When a Trial Court invokes the Jurisdiction of the Common Law (Trespass) as an inseparable part of its Decision against the Government, can a Court of Appeals base its decision to Reverse the Trial Court solely on the grounds of the Governments' breach of municipal regulations and the Public Duty Doctrine, in violation of the standards of review guaranteed under the Seventh Amendment to the United States Constitution?

4) When Petitioners bring a valid complaint against

their Government of the District of Columbia to the Superior Court of the District of Columbia, and the Government agrees to a Bench Trial, and when the Trial Court acts as Finder of Facts with the Petitioners appearing unable to afford legal counsel and appearing Pro Se, relying on the Superior Court to act as Jury; when the Trial Court decides against the Government; should the Government be granted an automatic right to appeal the decision, if the Petitioners are not granted an automatic right to appeal the Reversal?

TABLE OF CONTENTS

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Page

OPINIONS BELOW 2
JURISDICTION 2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3
STATEMENT OF THE CASE 3
REASONS FOR GRANTING THE WRIT 12
CONCLUSION 18

INDEX TO APPENDICES

Page

Appendix A — Judgment of the Superior Court of the District of Columbia Civil Action No. 13973-84 EDWIN E. FORSMAN, SUSAN M. MILLER, Plaintiffs v. DISTRICT OF COLUMBIA, Defendant (entered March 16, 1988) 20

Page

Appendix B Unpublished Opinion of the District of Columbia Court of Appeals reported as
No. 88-455
DISTRICT OF COLUMBIA, Appellant,
v.
EDWIN E. FORSMAN and
SUSAN M.FORSMAN, Appellees.
No. 88-517
EDWIN E. FORSMAN and
SUSAN M. FORSMAN, Appellants,
v.
DISTRICT OF COLUMBIA, Appellee.
(Judgment entered October 4, 1990) . . . 21

Appendix C District of Columbia Court of Appeals Denial of the Petition for Rehearing
D.C.C.A., No. 88-455, 88-517, supra.
(issued February 26, 1991) 37

Appendix D Plaintiffs' Exh. B
Superior Court of the District of Columbia
Civil Action No. 13973-84,
FORSMAN, et. al. v. D.C., supra
(Admitted: Thurs., March 10, 1988) . . . 39

Page

Appendix E — Excerpts of Proceedings, March 11, 1988, Civil Action No. 13973-84, FORSMAN, et. al. v. D.C., supra. (Trial witness, D.C. Building Inspector, James Minor) 41

Appendix F — Excerpts of Proceedings, March 14, 1988 C.A. No. 13973-84, supra, (Trial witness, Rev. Brock) 45

Appendix G — Unpublished Findings of Fact and Conclusions of Law of the Superior Court of the District of Columbia C.A. No. 13973-84, supra, (issued from the Bench, March 14, 1988) 47

Appendix H — U.S. Patent # 4,092,785 Plaintiffs' Exh. #13 C.A. No. 13973-84, supra, (Admitted: March 15, 1988) . . . . . Separate Appendix

Page

Appendix I — Unpublished Ruling on Evidential matters relative to the Patent by the Superior Court of the District of Columbia. C.A. No. 13973-84, supra, (issued from the Bench March 16, 1988) 72

Appendix J — Unpublished Ruling on Damages by the Superior Court of the District of Columbia C.A. No. 13973-84, supra, (issued from the Bench March 16, 1988) 74

Appendix K — D.C.M.R. 109.7 (1),(2) 90

Appendix L — United States Constitution Amendment IV 92

Appendix M — United States Constitution Amendment VII 93

Appendix N — United States Constitution Article I, Section 8 (8) 94

TABLE OF AUTHORITIES CITED

Page

CASES

Baker v. Washington,
448 F.2d 1200 (D.C.Cir.1971) 13

Biggs v. Stewart,
App.D.C., 361 A.2d 159 (1976) 12

Glus v. Brooklyn Eastern District Terminal
No.446 9

STATUTES

United States Constitution,

Fourth Amendment 16, 18

Seventh Amendment 13, 15, 18

Article I, Section 8,(8) 10, 16, 17, 18

Page

OTHERS

Black's Law Dictionary,
(5th Ed. 1979) pp.1347,48. 13

Restatement, Second, Torts, § 162. 14

Restatement, Second, Torts, § 159. 14

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

EDWIN E. FORSMAN,
SUSAN M. FORSMAN - Petitioners

vs.

DISTRICT OF COLUMBIA - Respondent

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Petitioners, Edwin E. Forsman and Susan M. Forsman, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the District of Columbia Court of Appeals reversing the decision of the Superior Court of the District of Columbia when the Government of the District of Columbia had illegally directed the taking and seizing of the Petioners' property, in violation of the rules of

Common Law (Trespass) and the 4th Amendment to the Constitution, and preventing the Petitioners from exercising their rights under Article I; Section 8 (8) of the U.S. Constitution; and where the review by the District of Columbia Court of Appeals violates the Seventh Amendment to the U.S. Constitution.

OPINIONS BELOW

The unpublished written opinion of the District of Columbia Court of Appeals appears in Appendix B to this Petition. The unpublished Findings of Fact and Conclusions of Law of the Superior Court of the District of Columbia appears in Appendix G to this Petition. The unpublished Ruling on Damages by the Superior Court of the District of Columbia appears in Appendix J to this Petition. The unpublished Ruling of the Superior Court of the District of Columbia on evidential matters relevent to the Patent appears in Appendix I to this Petition. The Judgment of the Superior Court of The District of Columbia appears in Appendix A to this Petition.

JURISDICTION

The District of Columbia Court of Appeals Opinion in this matter was filed on October 4, 1990. A timely Petition

for Rehearing was filed by the Petitioners on October 22, 1990. The D.C. Court of Appeals' denial of the Petition for Rehearing was issued on February 26, 1991, and is set forth in Appendix C. This Court's jurisdiction is invoked under Title 28, U.S.C. ss 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment IV to the United States Constitution, Amendment VII to the United States Constitution, and Article I, Section 8 (8) of the United States Constitution are set forth in Appendices L, M, and N, respectively.

STATEMENT OF THE CASE

On the evening of December 9, 1981 an agent of the District of Columbia Building Department, Inspector James Minor, acting in official capacity, instructed a third party to cross over the Petitioners' property line to seize and take property belonging to the Petitioners; without the knowledge or consent of the Petitioners, and without notice or warning to the Petitioners. As a result of the Trespass, and the seizing and taking, the Petitioners' only existing Patented invention was destroyed,together with the Petitioners' home and place of residence in Washington, D.C.

After having given proper Notice to the District of Columbia, the Petitioners filed a timely Complaint against the Municipal Corporation of the District of Columbia in the Superior Court of The District of Columbia.

On January 22, 1985, the District of Columbia filed a Motion for Summary Judgment on the grounds that the District was insulated from liability for any negligence under the theory of the Public Duty Doctrine. The Motion was heard and denied by the Superior Court of the District of Columbia.

On August 4, 1987, the District of Columbia filed a "Supplemental" Motion for Summary Judgment, based on similar theories under the Public Duty Doctrine. The "Supplemental" Motion was denied by the Superior Court of the District of Columbia.

On March 10, 1988, the Petitioners were granted a bench Trial in the District of Columbia Superior Court before the Hon. Frank E. Schwelb, with Judge Schwelb presiding and acting as Finder of The Facts.

The Petitioners appeard before the Court Pro Se, unable to afford legal counsel and depending solely on the Court as Jury.

The District of Columbia Municipal Corporation agreed to a Bench Trial, with Nancy R. Dorsch, Esq. appearing as assistant Corporation Council for the District.

On March 11, 1988, at the conclusion of the

Petitioners' case, the District made another motion for Dismissal, which was also denied.

On March 14, 1988, at the conclusion of the Trial on the Issues of Liability, the Superior Court of the District of Columbia found, among other things, that there was sufficient evidence to find the District of Columbia negligent and liable to the Petitioners for damages, partially arising out of the District's breach of its own regulations governing demolition procedures (D.C.M.R.109.7).

The Trial Court found, in part, that prior to the collapse of the Petitioners' residence in Washinton, D.C., the Petitioners had placed a telephone call to the District's Building Department, requesting the District's protection from damages that were occurring to the Petitioners' home as a result of a demolition being performed on a building which was attached to, and was structurally supporting, the Petitioners' place of residence.

The building being demolished was owned by Rev. Brock of Washington, D.C.

The Trial Court found that a special relationship had grown between the District of Columbia Building Inspector James Minor and the Petitioners because of the language of D.C.M.R. 109.7, and as a result of the Petitioners' call for assistance, and because of Inspector Minor's subsequent assurrances and visits with the Petitioners; and because of Inspector Minor's subsequent intervention into the demolition activities on behalf of the Petitioners; the Trial

Court found that the Petitioners' reliance on Inspector Minor's performance was justified.

The Trial Court found that an operation known as underpinning had been undertaken in an effort to stabilize the Petitioners' residence, which caused its total collapse, and concluded that the underpinning had been undertaken because of the demolition, and because of the District's breach of D.C.M.R. 109.7, the District owed a Duty to the Petitioners under the Public Duty Doctrine.

In addition to the liability imposed on the District under the Public Duty Doctrine, however, the Trial Court also found that, prior to the collapse of the Petitioners' residence, District Officials higher in authority than Inspector Minor within the District Building Department had inexplicably ordered Inspector Minor to disregard the regulations (D.C.M.R. 109.7) governing the demolition of the building which was attached to and supporting the Petitioners' place of residence.[1]

The Trial Court found that the District Building Department had inexplicably waived the requirement for a description of the same building that was attached to and was supporting the Petitioners' home, and that the District

---

[1] In addition to being residents of the property, the Petitioners were partners in the real estate owned by their Godfather, since deceased, and had a $15,000 share of the equity in their residence, which could not be recovered.

had inexplicably waived the requirement for an adequate description of the method and extent to which the demolition could safely be performed (D.C.M.R. 109.7 (1)), and had knowingly allowed the substitution of contractors to take place during the demolition, which was also a violation of D.C.M.R. 109.7 (2).

Significantly, the Trial Court also found that the District had inexplicably waived that portion of D.C.M.R. 109.7 (1) which would have specifically required that the contractor in this case carry public liability insurance in the minimum amount of $100,000 for any one accident, and would have only allowed for the waiver of the insurance requirement if the Petitioners' place of residence had not been attached to the building being demolished.[2]

The Trial Court found that no one from the District could, or would offer any explanation whatsoever for why the District had knowingly ordered the complete waiver of the regulations governing the demolition in this case.

The Trial Court found that, subsequent to being ordered to disregard the regulations governing the

---

[2] Because the contractor carried no liability insurance and proved judgment proof, the record is replcat with the Petitioners' costly, time consuming and failed attempts to find a source of recovery from which a re-construction of their invention could be accomplished before the expiration of their Patent; including a tragic inability to recover from their own insurers (The District Insurance Facility).

demolition, Inspector Minor ordered all of the demolition activities interrupted, in order to undertake repairs to the Petitioners' residence, during which time the underpinning of the Petitioners' residence was ordered.

Of greater significance, was the Trial Court's finding that the underpinning was intended to cross over the Petitioners' property lines for the purpose of seizing and taking the earth beneath and supporting the Petitioners' home, and that the underpinning involved a broader plan intended to eventually provide Rev. Brock with a sub-basement; and that the Petitioners remained unaware of all of these intentions.

More importantly, however, was the Trial Court's finding that Inspector Minor was fully aware that the underpinning would cross the property lines of the Petitioners' residence, and that it posed grave risk to the Petitioners and to their property; and that Inspector Minor nevertheless instructed the contractor to cross the Petitioners' property lines, to seize and take the Petitioners' property, in four foot sections, without warning or notice to the Petitioners, and without the knowledge or consent of the Petitioners.[3]

Furthermore, the Trial Court ruled that, if the

---

[3] The District argued that the underpinning was part of a plan to prepare for Brock's sub-basement, following the demolition, and therefore was not a part of the demolition itself.

District's actions and enforcement procedures under separate regulations governing underpinning (Title 5A-1 Sec. 721.2) were to be taken into account, together with the unclear manner in which the regulation had been drafted by the District; it could only be viewed as being an effort on the part of the District of Columbia to take advantage of its own wrong, and would violate the principles of the law laid down by the Supreme Court of the United States in Glus v. Brooklyn Eastern District Terminal. No. 446.[4]

The Trial Court ruled that there was sufficient evidence under the District's deliberate and unexplained breach of the demolition regulations to correctly establish liability under the Public Duty Doctrine, and that it would not be necessary to arrive at a decision on the Issue of the District's breach of separate regulations governing underpinning procedures (Title 5A-1, Sec. 721.2).

The Trial Court found that the contractor presumeably seized and took more of the Petitioners' property than Inspector Minor had instructed him to seize and take, which caused the total collapse of the Petitioners' three story residence, crushing nearly all of its contents, including the Petitioners' invention, which was protected under a U.S.

---

[4] The Petitioners' argued that Title 5A-1. Sec.721.2 demanded that the District obtain the Petitioners' written permission before the underpinning of the Petitioners' residence could lawfully commence, and that the District had failed there also.

Patent granted by the U.S. Patent Office to the male Petioner in 1978.

The Trial Court ruled that, in addition to the District's breach of the regulations governing demolition; liability in this case should properly be imposed on the District by invoking the jurisdiction of the common law (Trespass).

The Petitioners raised the issue of their Patent rights in their Complaint. Additionally, during a separate bench trial to establish the extent of damages, the issue of the Petitioners rights under Article I, Section 8 (8) was again raised.

The Trial Court ruled that the issues surrounding the Petitioners' Patent rights were, "..wide open legally.", but reached no conclusions regarding the limitations imposed by the District's Trespass on the Petitioners' ability to exercise their rights granted to them under Article I, Section 8 (8) of the U.S. Constitution.

The Trial Court did not allow the introduction of, but set aside for careful review by the Appellate Court, certain evidence relative to damage to the Petioner's Patent rights.

On March 8, 1988, the Superior Court entered judgment against the District of Columbia and awarded damages to the Petitioners' in the amount of $41,500.

The District of Columbia filed an Appeal on January 3, 1990, the Petitioners then filed a timely Cross-Appeal, again asserting their rights under Article I, Section 8 (8) of the U.S. Constitution.

On October 4, 1990, the District of Columbia Court of Appeals completely Reversed the decision of the Trial Court.

The Appellate Court supported its Reversal of the Trial Court's Decision with their Opinion that the collapse of the Petitioners' home was related to underpinning in preparation for the excavation of a sub-basement, which was a construction activity, and concluded therefore that the Petitioners' reliance on the District of Columbia to enforce Building Regulations governing demolition was not justified, and ruled that the District owed no special duty to the Petitioners by reason of the Public Duty Doctrine, and ruled that the Petitioners were entitled to no relief in the Trial Court.

The Petitioners filed a timely Petion for Re-Hearing on October 22, 1990.

The Appellate Court denied the Petition for Re-Hearing on February 26, 1991.

Shortly after the Superior Court's Judgment against the District of Columbia was entered in 1988, the Honorable Frank E. Schwelb took a seat on the District of Columbia Court of Appeals, but was recused in the Appellate Court's Reversal of the Trial Court's decision and Denial of the Petition For Re-Hearing.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for four reasons:

1) The Appellate Court's Reversal of the Trial Court's decision has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

Whereas the Appellate Court's Opinion is based solely on its conclusion that the underpinning occurred during construction activities related to the preparation of a sub-basement (see Appendix B); this departure from the standard of review for nonjury cases is particularly visible in this case, in the glaring light of the undisputed eyewitness testimony catagorically and totaly denying that construction activities or preparation for a sub-basement ever existed. See Appendix F.

By its own standards, in a case tried without a jury, the District of Columbia Court of Appeals may review the facts and the law of the case, but cannot set aside the judgment except for legal errors, unless the judgment is plainly wrong or without evidence to support it. See Biggs v. Stewart, App.D.C., 361 A.2d 159 (1976).

In this case, not only does the Appellate Court fail to point out any legal errors in the Trial Court's decision (see Appendix B, id.), but the Appellate Court's Opinion is wholly unsuported, and in fact is undisputably and totally

contradicted by the evidence. See Appendix F.,id., see also Appendix K.

If only for the reason that the Superior Court cited the District of Columbia for taking advantage of its own wrong, while the Petitioners were appearing without legal counsel and were continually raising newly discovered questions of the District's mis-conduct, clear through Trial, including the District's destruction of public records relevent to this case, should the Appellate Court, instead of Reversing, at the very least should have returned this case to the Trial Court to fully test if the quality of government itself was being jeopardized. See Baker v. Washington, 448 F.2d 1200 (D.C.Cir.1971).

2) The Reversal of the Trial Court's decision is in violation of the Petitioners' rights under the 7th Amendment to the U.S. Constitution.

The Appellate Court's re-examination of the Facts tried by the Trial Court especially crys out for the supervision of the Supreme Court, with the Appellate Court's thunderous silence on the matter of the District's Trespass. See Appendix E; see also Appendix B, id. vs. Appendix G, id.

The right of the Petitioners to their property is governed by well understood, longstanding, and fundamental Rules of the Common Law. Black's Law Dictionary, (5th Ed. 1979) pp.1347,48 states:

..

"*Joint trespass.* Exists where two or more persons unite in committing it, where some actually commit the tort, or the others command, encourage or direct it."

and:

"*Extent of trespasser's liability for harm.* A trespass on land subjects the trespasser to liability for physical harm to the possessor of the land at the time of the trespass, or to the land or to his things, or to members of his household or to their things, caused by any act done, activity carried on, or condition created by the trespasser, irrespective of whether his conduct is such as would subject him to liability were he not a trespasser.
Restatement, Second, Torts, § 162."

and:

"*Intrusions upon, beneath, and above surface of land.*
(1) Except as stated in Subsection (2), a trespass may be committed on, beneath, or above the surface of the earth.
Restatement, Second, Torts, § 159."

The Trial Court's Decision cannot be Reversed except

by the Rules of the Common Law or it is a clear violation of the Petitioners' rights under the VII Amendment to the Constitution. See Appendix M.

This is especially germane in this case since the Trial Court invoked the Jurisdiction of the Common Law as an inseparable part of its Decision against the District of Columbia. See Appendix G, id.

Yet the Appellate Court does not Reverse this case by citing the Rules of the Common Law, but rather, supports its Reversal on the basis of the District's breach of municipal regulations under a theory of the Public Duty Doctrine. See Appendix B, id.

The D.C.C.A. Reversal's violation of the 7th Amendment rights of the Petitioners now becomes apparent, because it has now risen to the standing that if the Government of the District of Columbia is falsely accused and wrongly decided against, it has an automatic right to Appeal in the District of Columbia; whereas, if Petitioners are rightfully found to have been harmed by the Government of the District of Columbia, and are falsely Reversed, the Petitioners have nowhere to Appeal but to the Supreme Court of the United States.

If the Petitioners are to have equal protection under the 7th Amendment to the U.S. Constitution, then Certiorari must be granted.

3) The Appellate Court's Reversal of the Trial Court's Decision is, by implication, a violation of the Petitioners' protections under the 4th Amendment to the U.S. Constitution.

The Appellate Court, by its Reversal of the Trial Court's decision, has by implication sanctioned Governmental intrusion onto privately held property, without warrent, for the purpose of seizing and taking property; provided that the seizing and taking have been done for purposes other than the stabilization of a building during a demolition. See Appendix B, id. and Appendix G, id.

This is clearly in opposition to the Petitioners' protections under the 4th Amendment to the U.S. Constitution. See Appendix L.

4) The Appellate Court's Reversal of the Trial Court's decision effectively nullifies and renders meaningless the Petitioners' Patent rights, and is repugnant to the Petitioners' guarantees under Article 1, Section 8 (8) of the U.S. Constitution.

The Trial Court ruled that the issues surrounding the damage to the Petitioners' Patent and subsequent rights were "...wide open legally." (see Appendix J) and set aside evidence relative to the Petitioners' rights to their Patent for careful review by the Appellate Court. See Appendix I.

The Appellate Court responded by not detailing the

loss of the Petitioners' Patent rights at all. See Appendix B, id.

The Appellate Court, by its total indifference to the Trial Court's Ruling, is implying that the Trial Judge, now deemed qualified to sit on the Appellate Court Bench and correctly ascertain facts and apply the law through examination of transcripts; could not then at Trial, through the direct examination of witnesses in person, correctly ascertain facts and apply the law in a manner suitable enough for the Appellate Court's review. See Appendix B, id., see also Appendix I, id.

The Government of the United States delivered a guarantee, in the form of a Patent, to the Petitioners; that their invention could be used by no one else; the District of Columbia Court of Appeals, by finding that the Petitioners were entitled to no relief in the Trial Court, and denying the Petition for Rehearing, guaranteed that the invention could not even be used by the inventor.

The Petitioners now come to deliver their Patent, which was granted to them by the United States, back to the Supreme Court of the United States; it has been rendered meaningless and useless to the Patent holders, and now serves only as an exhibit of evidence of wrongdoing. See Appendix H, see also Appendix N.

In the meantime, the time limits imposed upon the Patent holders continues to run. See Appendix N, id., see also Appendix H, id.

CONCLUSION

Because of the District of Columbia Court of Appeals decision to Reverse the Trial Court's decision, the Petitioners herein now come before this Court stripped of their rights under the Seventh Amendment to the Constitution and the Benefits of a Trial by Jury.

Because of the District of Columbia Court of Appeals decision to Reverse the Trial Court's decision, the Petitioners herein now come before this Court stripped of the Rule of Common Law, and the Fourth Amendment guarantees to be secure in their own homes. See Appendix D.

Because of the District of Columbia Court of Appeals decision to Reverse the Trial Court's decision, the Petitioners herein now come before this Court with their rights under Article 8, Section 8 (8) of the Constitution rendered useless and meaningless.

Any reasonable man, upon reviewing the evidence, would conclude that the District of Columbia rightfully owes these Petitioners at least $41,500. See Appendix A, id.

The District of Columbia's actions in this matter stand in an appalling and repugnant contradiction to the premise that Governments are instituted among men soley to secure the rights of life, liberty, and the pursuit of happiness. See Appendix D, id.

We respectfully request that this Court recognize the significance, and importance of what it means to these Petitioners, and to the Law, to live in the United States withhout protection of the Rule of Common Law, and devoid of Constitutional guarantees.

For these reasons, the Petitioners herein pray that this Court grant their Petition for a Writ of Certiorari to review the judgment and opinion of the District of Columbia Court of Appeals.

DATED: May 22, 1991

Respectfully submitted,

Edwin E. Forsman

EDWIN E. FORSMAN

Susan M. Forsman

SUSAN M. FORSMAN
Pro Se

4436 West Taro Drive
Glendale, Arizona 85308
602-581-2837

[APPENDIX A]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

C.A. No. 13973-84

EDWIN FORSMAN and SUSAN M. MILLER,
Plaintiffs
v.
THE DISTRICT OF COLUMBIA,
Defendant

Docketed: Mar.16,1988 Filed: Mar.17,1988

JUDGMENT

This action came on for (trial) before the Court, Honorable Frank E. Schwelb, Superior Court Judge, presiding, and the issues having been duly (tried) and a decision having been duly rendered, it is this 16th day of March, 1988.

ORDERED

That the Plaintiff Edwin E. Forsman & Susan M. Miller recover of the Defendant District of Columbia the sum of $ 41,500.00 with interest thereon from 3-16-88 at the rate of 4 per cent per annum as provided by law, and his costs of action.

[APPENDIX B]

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 88-455

DISTRICT OF COLUMBIA, APPELLANT,

V.

EDWIN E. FORSMAN and SUSAN M. FORSMAN, APPELLEES.

No. 88-517

EDWIN E. FORSMAN and SUSAN M. FORSMAN, APPELLANTS,

V.

DISTRICT OF COLUMBIA, APPELLEE.

Appeals from the Superior Court of the District of Columbia

(Hon. Frank E. Schwelb, Trial Judge)

(Argued May 1, 1990 Decided October 4, 1990)

Martin B. White, Assistant Corporation Counsel, with whom *Herbert O. Reid, Sr.,* Acting Corporation Counsel at the time the brief was filed, *Charles L. Reischel,* Deputy Corporation Counsel, and *Lutz Alexander Prager,* Assistant Deputy Corporation Counsel, were on the brief, for appellant and cross-appellee.

[APPENDIX B]

Edwin E. Forsman and *Susan M. Forsman, pro se,* appellees and cross-appellants.

Before BELSON, TERRY and FARRELL, *Associate Judges.*

BELSON, *Associate Judge:* The District of Columbia appeals a judgment of $41,500 in favor of the Forsmans entered following a bench trial. At issue was the District's alleged negligence in failing to require an adjacent landowner to obtain a demolition permit prior to commencing the inadequate underpinning work that caused the collapse of the Forsmans' residence. The Forsmans have filed a cross-appeal. The dispositive issue on appeal is whether the public duty doctrine insulates the District of Columbia from liability for any negligence on its part. We conclude that the public duty doctrine forecloses the Forsmans' recovery of their losses against the District of Columbia. Consequently, we hold that the trial court erred in finding the District liable, and we reverse.

I.

The salient facts involved in this case are essentially undisputed. On December 10, 1981, the house the Forsmans were living in at 730 Columbia Road, N.W., in the District of

Columbia,[1] collapsed during the course of underpinning[2] work conducted by a contractor hired by the Forsmans' neighbor, Reverend William Brock. Reverend Brock had planned an expansion of his church, The Old Pentecost Church, which required the demolition of 728 Columbia Road, N.W., next door to the Forsmans. Reverend Brock secured two building permits for the repair and addition on his church property but he neither applied for nor was issued a demolition permit to raze the building adjacent to the Forsmans' residence. He hired a contractor, John Watson, to do the demolition work. While monitoring the construction activities pursuant to the permit, James M. Minor, a District of Columbia Building Inspector, noted in September, 1981, that workers were preparing to raze the premises located at 728 Columbia Road. Minor also learned that no demolition permit was on file. When he called his supervisor at the Building Inspection Division of the

---

[1]The Forsmans did not own the house. They resided pursuant to an agreement with Mr. Forsman's godfather.

[2]Underpinning is a construction technique which involves excavating beneath the walls of a building to remove the soil under a building's foundation, and then replacing the removed soil with supporting material such as reinforced concrete in order to strengthen and support the foundation of the building.

Department of Consumer and Regulatory Affairs of the District of Columbia about the failure to obtain such a permit, Minor was told that none was required. Consequently, Reverend Brock was never required to obtain a demolition permit for the razing of the building at 728 Columbia Road. According to demolition permit regulations, liability insurance in the minimum amount of $100,000 for personal injury and $100,000 for property damage was a prerequisite to issuing a demolition permit 12 DCMR § 109.7 (1986) (formerly 5A-1 DCCR § 109.7).

As a result of the initial demolition work in September or early October, 1981, the Forsmans' house was damaged in that so-called "pinholes" appeared where mortar between bricks had become dislodged due to the demolition activities next door. After Reverend Brock refused to repair the damage, the Forsmans contacted the District of Columbia Building Inspections Department in early October, 1981, in an effort to have the damage repaired. Inspector Minor, who was the District of Columbia official monitoring the repair and addition permits that Reverend Brock obtained in order to construct an addition to his church facilities, met with the Forsmans concerning the damage. Minor assured the Forsmans that the pinhole damage caused by Reverend Brock's work would be repaired. As a result of Minor's urging, Reverend Brock had the pinholes parged (covered

with cement) to repair the damage caused by the demolition of 728 Columbia Road.

Reverend Brock dismissed Watson, the contractor, from his duties because of dissatisfaction with his services after most but not all of the demolition of 728 was completed. Then, Reverend Brock hired Vejar & Associates, Inc. ("Vejar") to complete the parging and comence the underpinning work to prepare for the construction of a subbasement. Inspector Minor explained to Vejar the proper way to complete underpinning which involved excavating beneath the Forsmans' house. Based on Minor's conversation with Vejar, Minor was satisfied that Vejar was familiar with proper underpinning techniques. Vejar presumably did not follow Inspector Minor's instructions, as the Forsmans' house collapsed on the afternoon that Vejar commenced the underpinning. Significantly, the trial court found that Inspector Minor had met with the Forsmans only two times before the building collapsed.[3] The record

---

[3]Although we refer to 730 Columbia Rd., N.W. as the residence belonging to the Forsmans, the house actually belonged to Mr. Forsman's godfather, the late Mr. Charles D. Stinson. Mr. Stinson and Mr. Forsman apparently were partners with an agreement allowing the Forsmans to live in the premises rent free in exchange for their services in renovating the premises, an arrangement that permitted the Forsmans to devote a

reveals the many difficulties the Forsmans have had in getting compensated for their losses. Reverend Brock settled with the Forsmans for $25,000 in a previous law suit. Vejar was apparently uninsured and judgment proof. The Forsmans did not collect pursuant to the policy of insurance on the house on 730 Columbia Road, and they indicate that the period of limitations has since run on any such insurance claim. The Forsmans finally turned to the District of Columbia for compensation for their losses.

We will not detail the losses and damages asserted by the Forsmans. Suffice it to say that they sought substantial damages, based principally on the destruction of the only working model of a patented multi-media teaching machine that Mr. Forsman and his previous wife had invented. The trial court awarded them $66,500, against which it set off the amount of $25,000 paid them by the Reverend Brock, for a net amount of $41,500. The District noted a timely appeal, and the Forsmans cross-appealed, in part because they contend that the damages awarded them were insufficient.

II.

For purposes of this appeal, the District of Columbia concedes that it was negligent in not requiring the Reverend Brock to obtain a demolition permit for razing the house at

---

considerable amount of time to refining a patented invention.

728 Columbia Road. It argues, however, that the public duty doctrine insulates it from any liability for the consequence of that negligence. The trial court ruled, to the contrary, that the District owed a duty to the Forsmans. The court also found that the Forsmans were "predictable victim[s]," and concluded that the demolition permit regulations protect not only the general public, but neighboring landowners in particular. An examination of our precedents regarding the public duty doctrine demonstrates how difficult it is to qualify for an exception from it. Our case law has deemed excepted one who is a member of a specifically protected class or one who has established a special relationship with an agent of the District of Columbia. *See Turner v. District of Columbia,* 532 A.2d 662 (D.C. 1987). We have acknowledged "the fundamental principle that a government and its agents are under no general duty to provide public services, such as police protection, to any particular individual citizen." *Warren v. District of Columbia,* 444 A.2d 1, 4 (D.C. 1981) (en banc). "Under the public duty doctrine, a person seeking to hold the District of Columbia liable for negligence must allege and prove that the District owed a special duty to the injured party, greater than or different from any duty which it owed to the general public." *Klahr v. District of Columbia,* 576 A.2d 718 (D.C. 1990). *Accord, Akins v.*

District of Columbia, 526 A.2d 933, 935 (D.C.), *cert. denied,* 484 U.S. 890 (1987); *Morgan v. District of Columbia,* 468 A.2d 1306, 1310-11 (D.C. 1983) (en banc). As this court stated in *Turner, supra:*

> [T] here are at least two ways to demonstrate the existence of a "special relationship" between the city and the injured party which would justify reliance by the injured party on the city's representations. Such a relationship can be established either by "direct contact or continuing contact between the victim and the governmental agency or official," . . . or by a statute that prescribes " 'mandatory acts clearly for the protection of a particular class of persons rather than the public as a whole.' "

Id. at 667 (citations and footnote omitted).

Our review of the record in light of the case law leads us to disagree with the trial court's ruling, principally in reliance on *Turner,* that the District of Columbia owed a special duty to the Forsmans as members of a protected class and "predictable victims" of negligence by the District. First, the duty of the District of Columbia to enforce its regulations, including the demolition permit regulation at issue here, is normally a duty owed to the general public rather than a specific individual. Nothing in the applicable

statute or regulations creates a special class of persons protected by the building code other than the general public. *See* D.C. Code § 5-1304 (1988 Repl.).[4] We do not deem the provision requiring liability insurance in connection with the issuance of a demolition permit to single out any particular category of persons for special protection against the risks that attend demolition work.[5] The absence of explicit language in the statute protecting the Forsmans as members

---

[4]Section 5-1304 provides:

> The Construction Codes shall be construed to secure their expressed intent, which is to ensure public safety, health, and welfare by building construction, through structured strength, energy and water conservation, accessibility to the physically handicapped, adequate egress facilities, sanitary equipment, light ventilation, and fire safety; and, in general, to secure safety to life and property from all hazards incident to the design, erection, repair, removal, demolition, or use and occupancy of buildings, structures, or premises.

Likewise, the D.C. Building Code, 12 DCMR (May 1986), containing the regulations on demolition permits, appears to protect public safety generally in accordance with the expressed intent of § 5-1304, *supra*.

[5]This case differs in significant respects from *Brennan v. City of Eugene*, 285 Or. 401, 591 P.2d 719 (1979). There it was held that the city's issuance of a taxicab license while negligently failing to assure that

of a particularized class readily distinguishes the instant case from *Turner, supra*, at 675, where this court held that the Child Abuse Prevention Act[6] explicitly creates a special duty owed by the District to neglected or abused children once a child abuse report is filed with the government agency established by statute for the protection of this narrow class of children. We hold, as a matter of law, that the Forsmans, as residents of a building adjacent to a site at which demolition was taking place, do not come within a special

---

licensee had public liability insurance required by ordinance gave rise to a cause of action in a passenger injured by driver's negligence. The court distinguished a number of public duty doctrine cases on the ground that they dealt with "the failure on the part of public officials to act at all," whereas *Brennan* involved the actual issuance of the permit, albeit negligently. *Id.* at ____, 591 P.2d at 724. That distinction differentiates the instant case as well. Even more significantly, the *Brennan* court also voiced its agreement with authorities that hold that when a state abrogates statutorily the doctrine of sovereign immunity, as had Oregon, it also rejects the public duty doctrine. *Id.* at _____, 591 P.2d at 724-25. In view of those holdings, we do not view *Brennan* as authority for appellees' position here.

[6]The court referred specifically to portions of the Act codified at D.C. Code §§ 6-2102, 2104, 2121, 2122, and 2124 (1981). *Turner, supra*, 468 A.2d at 667-68.

protected class but instead are members of the general public protected by the demolition permit regulation. Thus, the Forsmans do not qualify for the exception to the public duty doctrine that we described in *Turner, supra.*[7] *See Platt v. District of Columbia,* 467 A.2d 149,152 (D.C.1983); *Roberson v. District of Columbia,* 86 A.2d 536, 537 (D.C. 1952) (District not liable for failure to enforce regulations to prevent loitering, congregating and playing on public sidewalk where plaintiff was injured when a wagon struck her from behind).

Similarly, the District of Columbia, through its agent Inspector Minor, did not through any direct or continuing contact enter into a special relationship with the Forsmans as to the enforcement of the demolition permit regulation

---

[7] *Halvorson v. Dahl,* 89 Wash.2d 673, 574 P.2d 1190 (Wash. 1978), referred to by the trial court, is also readily distinguishable. In *Halvorson,* a widow, whose husband died in a hotel fire, sued owners of a hotel and the

City of Seattle due to alleged failure of Seattle officials to enforce building, housing, and safety codes. The court noted that the Seattle Housing Code *explicitly protected occupants* of buildings. *Id.* at _____. 1192 n.1, 574 P.2d at 1192 n.1. Accordingly, even if the traditional sovereign immunity rule still applied, the widow's deceased husband, as the occupant of a building when he perished in the fire, was a member of a specifically protected class

sufficient to impose upon the District of Columbia a duty to protect the Forsmans from any harm emanating from the demolition work.[8] In *Platt v. District of Columbia, supra,* 467 A.2d at 152, we held that the District's act of permitting a club to remain open with an occupancy permit despite building and fire code violations created no special duty to club occupants injured in a fire at the club. We articulated a two-part test that a plaintiff must meet in order to convert a duty owed to the general public into a special duty: "(1) a direct contact or continuing contact between the victim and the governmental agency or official; and (2) a justifiable reliance on the part of the victim." *Platt, supra,*

---

warranting an exception to the application of the public duty doctrine. Unlike the Seattle Housing Code, the District of Columbia Building Code's demolition permit regulations were not enacted to specifically protect occupants of adjacent property.

[8]For purposes of this appeal, we are assuming that the underpinning work in this case was within the scope of the demolition permit although there was no specific finding by the trial court to this effect. The evidence would permit, but not require, such a finding. Because of our holding regarding the public duty doctrine, there is no need to remand this case to the trial court for more specific findings of fact on the causal relationship between failure to require the demolition permit and financial loss resulting from collapse of the building.

467 A.2d at 151 (citation omitted). *See also Morgan v. District of Columbia, supra,* 468 A.2d at 1319 (no affirmative undertaking by police captain to protect police officer's wife from her violent husband); *Warren v. District of Columbia, supra,* 444 A.2d at 3 (inadequate police investigation in response to rape victims' call to 911 insufficient to establish special relationship or justifiable reliance). Even though it could be argued (perhaps unsuccessfully) that Inspector Minor's assistance to the damage from the demolition around October, 1981, was sufficient to create a special relationship with the Forsmans concerning the completion of the repairs of the pinholes, that relationship would not encompass the underpinning, an entirely different operation. The trial court found that Inspector Minor had only two meetings with the Forsmans prior to the collapse of their home. The trial court further observed in its oral findings that:

> the problem . . . with the District's responsibility [is] that they had a dealing with him on . . . primarily the parging responsibility, the pinhole responsibility and the question that somebody would go in under their land and somebody else was demolishing buildings without having the proper permit and all that never came up. They didn't know anything about it. And there was no occasion for this

inspector to discuss it with them.

Minor, therefore, did not develop a special relationship with the Forsmans in relation to Vejar's underpinning work. The mere fact that the inspector assisted the Forsmans in getting the parging repairs done could not have justified reliance by the Forsmans on Inspector Minor to protect them from any and all harm arising out of the demolition and construction project going on next door.

We also note that the Forsmans do not claim that Minor negligently advised Vejar concerning proper underpinning techniques. Their essential claim is that the District negligently failed to require a demolition permit. We can discern no specific undertaking to protect the Forsmans in particular nor does the record permit the conclusion that the Forsmans justifiably relied on such an undertaking by the District. *See also Akins v. District of Columbia, supra,* 526 A.2d at 935. Certainly an inspector's limited involvement in monitoring a construction or demolition site does not place a duty on the District to monitor such activities on that property continuously thereafter.

This leads us to observe that one consequence of the public duty doctrine is that the licensing and inspection obligations imposed on the District of Columbia for the benefit of the public do not make the District an insurer of

the public against any negligent acts by private parties acting without the requisite permits. We also observe that in the course of their daily activities, D.C. building inspectors are likely to come into frequent contact with persons who live near construction or demolition sites; Inspector Minor testified that his department encourages inspectors to establish contact with neighbors concerning underpinning and other construction matters. The District of Columbia should be free to exercise its police power for the benefit of the general public without the fear that by making contact with citizens in the course of carrying out its responsibilities, the District may forfeit its immunity under the public duty doctrine, and expose itself to tort liability for any injury or damage incurred in the course of work subject to licensing or inspection by the District due to the negligence of the District's employees or agents. *See Morgan, supra,* 468 A.2d at 1311.

Accordingly, we reverse the ruling of the trial court. We also reject the Forsmans' claims on cross-appeal regarding damages and reverse and remand this case to the trial court so that judgment in favor of the District of Columbia may be entered.[9]

Reversed

[9]We have examined the other points made by appellees on this appeal and cross-appeal, and conclude that appellees were entitled to no relief in the trial court.

[APPENDIX C]

DISTRICT OF COLUMBIA COURT OF APPEALS

NO. 88-455

DISTRICT OF COLUMBIA,
Appellant,
v.
EDWIN E. FORSMAN, ET AL.,
Appellees.
[CA13973-84]

No. 88-517

EDWIN E. FORSMAN, ET AL.,
Appellants,
v.
DISTRICT OF COLUMBIA,
Appellee.

(Filed February 26, 1991)

BEFORE: *Rogers,* Chief Judge; *Ferren, Belson, Terry, Steadman, *Schwelb, Farrell, and Wagner,* Associate Judges.

ORDER

On consideration of the petition of Edwin E. Forsman, et al., for rehearing en banc; and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it its

ORDERED that the petition for rehearing en banc is denied.

[APPENDIX C]

PER CURIAM

* Associate Judge *Schwelb* has recused himself from these cases.

Copies to:

Clerk, Superior Court

Charles L. Reischel, Esquire
Deputy Corporation Counsel

Mr. Edwin E. Forsman
Ms. Susan M. Forsman
4436 West Taro Drive
Glendale, Arizona 85308

[APPENDIX D]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

C.A. No. 13973-84

EDWIN FORSMAN and SUSAN M. MILLER,
Plaintiffs
v.
THE DISTRICT OF COLUMBIA,
Defendant

Excerpts of the Proceedings of Thursday, March 10, 1988.

Plaintiffs' Exhibit B

[Photograph of Petitioners' residence on Dec. 10, 1981, from The Washington Post, December 11, 1981, p. B1]

[Transcript at 64]

* * *

[APPENDIX D]

By Joel Richardson — The Washington Post

* * *

[APPENDIX B]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

C.A. No. 13973-84

EDWIN FORSMAN and SUSAN M. MILLER,
Plaintiffs
v.
THE DISTRICT OF COLUMBIA,
Defendant

Excerpts of the Proceedings of Friday, March 11, 1988.

Testimony of D.C. Building Inspector, James Minor

[Transcript at 219, lines 3-25; Transcript at 220, lines 1-9]

* * *

Mr. Forsman: "Right. I think it may simplify it if I put it this way: When they tore 728 Columbia Road down -"

Inspector Minor: "Okay."

Mr. Forsman: "They had to underpin 730 Columbia Road, correct?"

Inspector Minor: "Right, they had to; right, they had to.". .

Mr. Forsman: "And the plans for underpinning actually called for -- do they call for crossing the property lines of 730 Columbia Road?"

Inspector Minor: "Right. It shows on approved plans for such."

Mr. Forsman: "And on December 9th, 1981, did you go over those plans with Vejar, the contractor; did you?"

Inspector Minor: "This is what I did when I approached the new contractor, the Number 2 contractor -"

Mr. Forsman: "Yes."

Inspector Minor: "-- I got out of my car. I left the trainee in my car and introduced myself to the Number 2 contractor, and I asked him did he have the approved plans with him at the site.

"He said he did.

"Now, I said, 'Since you have plans to underpin this building, you talk me through the sequence, as you plans state, and show me how you're going to underpin this building.'

"And he did. He knew the proper sequence, as the plans show, and he knew how he is supposed to go into the embankment, into your home, and the certain locations and to call for the inspector, when he is ready for the inspection, when you are ready for the first pour."

Mr. Forsman: "Did you ask him if he had our

permission to do that?"

Inspector Minor: "No, I didn't have to ask him that."

* * *

[Transcript at 221, lines 22-25;
Transcript at 222, lines 1-12]

* * *

Mr. Forsman: "So if there is no written permission to underpin -- if you knew that there was no written permission, would you have allowed him to --"

Inspector Minor: "Yes, I will be covered under the code in the second paragraph of Page 290 that the contractor, he doesn't have to get in touch with the owner.

"He just takes the necessary means and precautions to protect your property.

"Do you understand what I am saying? He doesn't have to get in touch with the people to the adjoining property that he is going to underpin underneath your building after the approved plans show.

"But he has to show -- he has to provide all protection and secure your property so it wouldn't cause your property to be in any condition other than the way it was when you left your home."

* * *

[Transcript at 228, lines 17-25;
Transcript at 229, lines 1-2]

* * *

The Court: "Okay. In your affidavit that you filed in support of the District's motion for summary judgment, didn't you say this:

'I discussed with Mr. Roy Rodwell, the contractor, the procedure that he was planning to use, and I told him to dig the locations for underpinning, leaving no more than four feet between, and to dig them two at a time.'"

The Witness: "I told him he could dig two at a time, providing that the site would allow as such, yes, Your Honor."

* * *

[APPENDIX F]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

C.A. No. 13973-84

EDWIN FORSMAN and SUSAN M. MILLER,

Plaintiffs

v.

THE DISTRICT OF COLUMBIA,

Defendant

Excerpts of the Proceedings of Monday, March 14, 1988.

Testimony of Reverend William R. Brock

[Transcript at 370, lines 19-25;
Transcript at 371, line 1]

* * *

Mr. Forsman: "Reverend Brock, at any time during the activities being conducted, up to and including the day of the collapse, was there any work being performed on excavation for a sub-basement for the new addition?"

Reverend Brock: "No."

[APPENDIX F]

Mr. Forsman: "Was there ever any work done on the construction itself of the new addition?"

Reverend Brock: "No."

* * *

[APPENDIX G]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

C.A. No. 13973-84

EDWIN FORSMAN and SUSAN M. MILLER,
Plaintiffs
v.
THE DISTRICT OF COLUMBIA,
Defendant

Excerpts of the Proceedings of Monday, March 14, 1988.

Hon. Frank E. Schwelb, Trial Judge

Findings of Fact and Conclusions of Law

[Transcript at 462 through 487]

* * *

The Court: "I apologize to everybody. I am ready now to give my decision as to liability. That will just about take me to where I've got to leave to go to the criminal calendar.

"My reaction to this case to some extent is that I will be glad if I do get on this Court of Appeals because you will have a little bit more time to study and digest difficult legal issues without running afoul of the calendar.

[APPENDIX G]

"This is not the simplest case in the world. I have done my best to get on top of it, and I believe I have got on top of it.

"It is a close case, but, basically, I will make my findings of facts and then my legal conclusions.

"Here we are. Bear with me for just a moment, please.

"Reverend Brock and his Pentacostal church made plans to build an addition in a parking lot at 726 Columbia Road, a community center of some kind, and in order to do that, found it necessary to tear down or raze a structure, demolish a structure that was standing there now that was immediately adjacent to 730.

"Brock -- Reverend Brock employed Watson, who was contractor number one, to do the work. Mr. Watson started doing the demolition and did most of the demolition but Brock was dissatisfied with him and somewhere in the neighborhood of October of 1981 replaced him with contractor number two, Vejar.

"Vejar did some additional work which included on December, I think it was the 9th and 10th the preparatory work to the underpinning of 730 where the plaintiffs were living and which was owned by the godfather of the male plaintiff.

"Vejar did not follow a plan which was approved by the D.C inspectors and as a result of his not following this plan,

this led to the collapse of Number 730 on the 10th of December 1981 and with it many of these plaintiffs' possessions and many of their dreams for the future.

"Now, there were several occurrences, which the Court can only characterize as egregious in connection with this unfortunate incident.

"Neither Reverend Brock nor any of the contractors obtained a demolition permit for doing this work and for demolition for part of the structure, even though this was in clear violation of a provision of the building code which says essentially no permit, no demolition.

"When Inspector Minor, who made a very favorable impression on the Court generally, both as to his honesty and as to his conscientiousness came upon the scene and observed that there was demolition going on, he promptly reported it to his superiors.

"For some reason, which is unexplained in the record and the defense didn't come up with any testimony and counsel said that the pertinent official had no recollection of it, they just said to go on without a demolition permit.

"Vejar was not insured and ultimately when he was sued by Brock after Brock had been sued by these plaintiffs and their godfather, I guess, Brock having compromised with these plaintiffs and agreed to pay them a sum of money, and it seems to be undisputed that Vejar turned out

to be judgment proof and no recovery could be had against him, so that the plaintiffs are now proceeding against the District.

"Since there was no demolition permit issued, there was no occasion to receive what is called in the regulation adequate description of the structure to be razed and the method to be used in razing. At least that much was missing and there was some testimony to suggest that that would have included a somewhat detailed plan as to what would have been necessary.

"The second extraordinary incident that happened here, and it is not quite clear to me whom I should blame for this, is that people went onto these plaintiffs' property or at least the property in which they had an interest and dug underneath it and eventually collapsed it. And at no time did anybody either have or ask for permission to go on their property.

"I mean, defense makes a point that the godfather - and I'm sorry. I don't mean that in a negative sense -- but there was no testimony that anybody got any permission and it is pretty clear that they didn't from all the testimony that I have heard from anybody.

"It is unclear to the Court exactly what would have happened if they had sought permission, but certainly the plaintiff would have been in a position to look into the

situation, and as the male plaintiff indicated today, at least the common sense thing would have been at least to check into whether the people were insured for this kind of work. "They may also have been very curious as to what they were going to do under their house and ask somebody to look into it before they granted the written permission.

"As I say, and I reacted to this during the course of the trial, it sounded sort of outlandish that they would approve the plans in terms of how many feet things had to be apart and all this sort of thing but not as to whether anybody had permission to be there. But to find that situation incongruous is a lot easier than to figure out what liability emerges from that situation.

"As I say, the walls to 728, the demolished building had been adjacent to and in my understanding sort of leaning against 730.

"When it was demolished, this resulted directly in pin holes appearing in plaintiffs' wall.

"Plaintiffs didn't know what to do about it, so they contacted Reverend Brock and Reverend Brock got with an attorney who rather preemptorily stated that it wasn't his responsibility in a letter that is in evidence.

"So they then contacted the District of Columbia and Inspector Minor came along, and, again, this is one of the rather oddities about this situation, that the fact that

Inspector Minor was extremely forthcoming, extremely responsible, extremely reliable, made the plaintiffs rely on him more and the more they relied on him the more that seems to operate in favor of their right to recover.

"So under this particular legal theory, which I will get to shortly, the better he behaves, the more justifiable the plaintiffs' reliance and the better their chance of recovering.

"It is a bit of an oddity in the law that that should be so, but that is what appears to be the flavor in that situation.

"Anyway, Inspector Minor verified these pin holes apparently and he said I'll certainly see what I can do to have something done about this. And as a result of this he went to see Reverend Brock, who was also very cooperative.

"I thought that both these men made a very good impression on the Court, really. I think that everybody who testified in this case, frankly, made a good impression. It is just the case that is difficult.

"Probably the prime miscreants, whoever they were were not before the Court during this trial, but in any event he went over and saw Reverend Brock and maybe the contractors and the result of it was that Reverend Brock says, sure, and arranged to have the plaintiffs' wall parged.

"That again generated more faith and trust on the part of the plaintiffs in Mr. Minor as a representative of the District of Columbia here.

"As I say, they were satisfied with him and to a certain limited extent there were only two meetings before the collapse of the building, but to a certain limited extent, I could understand why they at least -- I sensed from their dealings with him, the District's carrying out of its responsibility in this matter were in good hands.

"The problem is with the District's responsibiliity that they had a dealing with him on was primarily the parging responsibility, the pinhole responsibility and the question that somebody would go in under their land and somebody else was demolishing buildings without having the proper permit and all that never came up. They didn't know anything about it. And there was no occasion for this inspector to discuss it with them.

"Now, apparently, most if not all of the demolition was completed by this time that 730 collapsed. I am going to go into that in a little bit more detail, but that is the nub of what I have to find on the basis of what I've heard.

"Certainly the contract with the number two contractor didn't specify anything about demolishing any buildings or structures and Mr. -- Reverend Brock said, well, it was some oral understanding, but lawyers are somewhat distrustful of oral understanding when there is a written contract between parties and these oral understandings are supposed to be in addition.

"Now, the Court isn't quite sure what would have been discovered if Inspector Minor's superiors had said to Brock, Reverend Brock and to his contractor, okay, you can't go on with this demolition; you need a permit and let's see all your stuff. Let's see all your stuff.

"Obviously they would have had to go and get some insurance and if they hadn't been able to go get some insurance -- I don't even know if they were insurable. There is no indication here whether they were insurable or not, but unless they could get insurance, they couldn't have proceeded.

"Now, they were supposed to give additional information, I think it was the defense witness. What was his name?"

Ms. Dorsch: "Mr. Ford."

The Court: "Mr. Ford. I believe it was he who testified that they would have had to have additional plans -- additional blueprints beyond this.

"His information was all third-hand from what other people told him, and he got on the scene much later.

"So that presents a problem of it being very evidentiary in this case, although I thought he was a very conscientious gentleman.

"The plaintiffs suggested that if more information had been secured at that time, it would have happened -- it

would have come about that the underpinning would be necessary after the demolition -- as a result of the underpinning being necessary after the demolition, some inquiry would have been made about the grade and the fact that 728 went lower than 730 and that this might have resulted in different plans for the underpinning.

"The District says essentially, well, no, we don't usually get that information from these plans anyway, so we wouldn't have gotten this information and the underpinning was too remotely connected with the demolition.

"It is difficult to exactly know what to make of that. On the one hand the burden of proof is on the plaintiffs. On the other hand you've got the rather odd situation of the District of Columbia having failed in its duty to require a permit and insurance and all this kind of thing and they want to be heard to say that even if we had done it right, nothing would have been discovered and the same results would have happened. That is a problematic kind of argument; trying to be rational about this.

"Like I say, I think a key fact here is that it is the city's duty not to allow demolition unless somebody had a permit, unless people with a permit provided this whole series of assurances, particularly the insurance and the more detailed information.

"None of these -- this razing could not have occurred

and without this razing -- I'm sorry. I forgot the name of the procedure again."

Mr. Forsman: "Underpinning."

The Court: "I'm sorry?"

Mr. Forsman: "Underpinning."

The Court: "The underpinning could not have occurred.

"Now, there are several legal issues that are presented by this, and I have decided that I am going to try to resolve one of them and not resolve the others because I don't think it is necessary for me to resolve the other one.

"I am going to address first the underpinning without consent issue. For somebody who is new to this type of case, it does seem extremely odd that you need consent for underpinning and that you go onto somebody else's land for underpinning, that the regulations at least imply that you have to have his written consent and yet that the District can approve it without requiring the written consent.

"I mean, from a common law jurisdiction, where, as I indicated earlier, that I will make it part of my decision here, that an Englishman's home is his castle; it seems if the District of Columbia is going to get into it at all, you would think it will get into that first element as to whether they've got any business on his land at all.

"But, as I say, the incongruity of that situation doesn't

necessarily give me a signal of how to resolve it.

"Now, this 721.2, if I may summarize it, which is the one about underpinning, says essentially that -- let me first of all say what it doesn't say. It doesn't say explicitly and clearly you cannot go on to his land without his written permission. It gives all kinds of hypotheses about what happens if they do have permission and if they don't have permission and part of that is -- frankly, I don't think it is intended -- I think it is just inexpert draftsmanship but it says that if Brock get plaintiffs' written permission to enter the adjoining premises, then he's got to go in there at his own expense to protect the plaintiffs' premises from injury, but if he doesn't get the written permission, then the plaintiffs have to do all the protecting.

"And it shall be the duty of the owner who fails to give such written permission to make the structure safe.

"And he's got to get the written permission of Brock to go in there.

"So, as the plaintiffs have very correctly pointed out, the thing contemplates written permission from somebody. Somebody's got to give written permission, and the regulation says what happens if they don't get written permission.

"The only thing that it doesn't say is that you can't give a building permit if you don't have the written permission.

"That obviously is what the District of Columbia people rely on in reading this written statute -- written permission regulation as not applicable here.

"108.9 says that in all cases where permits are approved contingent upon the written consent of a properly interested person, then that written consent has to be filed publicly.

"The problem here is that there is no indication that this was approved contingent upon the written consent of any party. In fact, the permit isn't contingent upon anything. It is just a plain permit.

"So, you have an odd situation where under the language of the statute no written permission had to be filed because it wasn't made contingent.

"Obviously the common sense of it is that if you have something like this underpinning and you are supposed to get written permission, and it is a written permission situation and you are supposed to file it and then if you file it the District knows it, then the common sense of this is that the District doesn't approve it unless all the written permissions are in place. That is the common sense of it.

"But the problem is that it is not written that way.

"Now I guess you could argue that the way it is written, since the permit was not made contingent on anybody's written permission, it didn't have to be filed and therefore the District is home free.

"The problem with that is, and I am just not going to resolve this problem today -- the problem with that is that it is the District of Colubia who wrote its own regulation, and if you follow this line of argument, the District is taking advantage of its own sloppy draftsmanship to excape liability.

"And there is a doctrine of law which is stated best in a U.S. Supreme Court case called Glus against one of the railroads. I have forgotten which railroad it is, but I think it is Glus against the railroad terminal, G-l-u-s.

"And it says -- there is a general principle of law applicable to a wide range of situations that no man may take advantage of his own wrong.

"I have not been able to -- I'm not sure how that plays into this situation, and so, because I think I can resolve this liability question without deciding that, I am simply, having given my pros and cons on the underpinning issue, I'm simply not going to reach it in my determination. I'm just honestly not sure.

"If I ever get the time to write a written opinion about this, I will probably decide it one way or the other, but I am not ready to do it now because I am just not sure.

"I have spent a good 30 or 45 minutes trying to figure that one out and any precedence that I could find, and I wasn't able to.

"The other issue isn't easy either. There is no question that the District should have required a razing permit; that it didn't; and that this enabled Brock and his contractors to proceed without any insuramnce and without whatever constitutes an adequate description.

"And we don't know what they would have got with an adequate description because we never got that far.

"The Court has no doubt that if the demolition had not been done, as it shouldn't have been done without the insurance, then there wouldn't have been any addition and without any addition there would have been no underpinnning or at least -- maybe even the underpinning wasn't directly related to the addition.

"It is the parking lot argument that the female plaintiff made to me which made a certain amount of sense to me, but anyway there would have been no collapse of the plaintiffs' house.

"But, Ms. Dorsch makes a pretty good argument too. She says that the demolition was essentially complete several weeks earlier; that even if the contractor had had insurance it wouldn't have covered it because you only needed the insurance for the demolition and it wouldn't have needed the insurance for the underpinning.

"Now, I am going to try to repeat what I think is the record as to whether the demolition was completed, but it is

less than crystal clear.

"The plaintiffs testified that the demolition had not yet been completed; that besides the removal -- maybe trash is the wrong word, but the results of the demolition, certain portions of walls were still not eliminated, which could only reasonably be considered to be part of the demolition.

"The defense witness whose testimony was predicated on his examination of records many years after the fact, and I probably wasn't as consistent about the hearsay problem as I should have been because he was never qualified as an expert, but he testified, at least the second time he was asked, I think he misunderstood the question the first time, that in his judgment the insurance of the demolition wouldn't have covered this anyway. So from his perspective there was no causation.

"Reverend Brock, where he gets to be an expert on this the good Lord only knows, but he connected up the underpinning with the demolition, and he is a very intelligent man except in his dealings with contractors.

"You fool me once, shame on me -- shame on you. Fool me twice and shame on me is the proverb that I stated to him about his contractors.

"But he didn't know what additional demolition had to be done except he talked about demolition that had to be done as between 728 and 727 Holbart, [Hobart] I think it is,

but he was unaware of what if any had to be done with respect to 730.

"Again, as I've indicated previously, the contract of the contractor suggested that there was no more in the contract to do demolition.

"As I say, the people who were there on the scene, these plaintiffs say, well there was still some brick wall involved and then they get put in the rather odd situation of saying, well, Reverend Brock, he is our witness but he couldn't see it all because he wasn't there the whole time.

"It is difficult to make a clear finding. The Court would find by the preponderance of the evidence -- I think this is the only finding I could make without calling anybody a liar.

"I don't think anybody was lying to me -- that most of the demolition had been done but it hadn't been altogether completed at the time of the fall of the house. I really do think that most of it was done, especially in relation to 730.

"Now, the real issue to me presented on this branch of the case is whether the District's failure to follow its own regulations was the proximate cause of the downfall of the plaintiffs' house, and, as I say, the issue is not free from doubt but for -- and reasons that follow I find that by a preponderance of the evidence that it was the proximate cause of the failure -- of the downfall of the building.

[APPENDIX G]

"The first thing is that sometimes you have to detach yourself from this a little bit and look at it from kind of a common sense perspective.

"Here you have -- well, you have more than two, but two primary really extraordinary occurrences. One of them is that you have here a system of permits and requirements which are supposed to make sure that people's houses don't fall down when work like this is going to be done. You have a complete failure of that; a total failure.

"And then you have something which I hope is unusual, which, in the sequence that runs from that, although the exact sequence and causation is in dispute, you have a whole house fall down. A whole house falls down, and either the two are connected by cause and effect or absolute coincidence of these two extraordinary events occurred in the sequence in which they occurred here.

"I have learned as a judge to be wary of coincidences. I mean, let me say this: All this cause and effect isn't as simply as it might seem. There is a famous story about Friday night scotch and soda; Saturday morning hangover. Saturday night whiskey and soda; Sunday morning hangover. Sunday night brandy and soda; Monday morning hangover. No more soda for me.

"You know, you can have problems with this before the fact and after the fact, but still it just seems astonishing

to me that there would be no cause and effect between such a complete failure of regulation and such a disasterous occurrence. It seems unlikely.

"Then you've got a situation which I tried to depict. I'm no mechanic. I don't understand mechanics, but I tried to put these two books next to each other, leaning on each other and I asked one of the witnesses, now do you mean say that if you take one of them away that is not going to substantially affect the stability of the other one. I don't remember what he said exactly, I'm persuaded that it seems that it would have such an effect to me.

"And then there is no question -- it seems to me we don't really know what would have happened if they enforced the rules. We don't know if the guy was insurable or not, but we do know that but for the District's failure -- had the District gone in there and said under the present circumstances you cannot proceed, then the sequence of events would have been no demolition, no addition, no going underneath whatever it is, underpinning and no collapse of the house.

"And then the other problem I have here, and I don't know quite how to identify it, but you have, and it seems somehow incongruous to me to have the District say, well, we blew it here and we are sorry we blew it and although we can't tell you exactly what would have happened, we think it

would have happened anyway.

"And then finally -- and this wasn't mentioned by anybody, but supposing they said, okay, you've got to get insurance, contractor. Now, nobody has put in evidence here about how much additional insurance would have cost him to deal with the underpinning also, but it surely wouldn't have been all that much.

"And it seems difficult to anticipate that he wouldn't have gotten that insured too, although one doesn't know.

"And, again, what is troubling here is that the plaintiffs have the burden of proof of the causation, but he has proved the causation in terms of on what the contractors produced, they shouldn't have been allowed to proceed. And it seems that somewhere in here the District gets a duty to show what would have happened otherwise.

"Okay. So, I am going to find by a preponderance of the evidence, and I realize that there is an appealable issue here, and I wish I had more time with it, but I am going to find in favor of the plaintiffs, except I still have to deal with the legal issue of the duty.

"On that, ladies and gentlemen, I want to tell you that occasionally a lawyer or a judge feels sort of triumphant and vindicated.

"I have not read the cases this morning that I have read since then, and I said but surely there is a difference

between this and that and then I read the cases and they say exactly almost in the same words what I said this morning.

"Adams against State, 555 Pacific 2nd 235, Alaska, 1976, courts have found a duty where the statute under which the state acted was for the special benefit of the plaintiff rather for the at large.

"Stewart against Schmeda (phonetic), a Louisiana case, 386 South 2nd 1357, Louisiana, 1980, workman was injured when a building collapsed due to the defective manner that the roof was attached to the front wall. The plans were not reviewed by competent individual. The inspectors relied instead on the builder's engineer.

"That is not terribly different from this case. The statute required detailed plans to be made, but they were not required.

"The Court talks about the public duty doctrine and then -- and it doesn't like it very much as applied to these situations -- and then it says in addition we note that in jurisdictions where the public duty doctrine is applied is subject to the important exception that liability can be found upon the violation of a duty that would be generally owed to the public if the statute or ordinance setting forth the duty indicates by its language that the duty is designed to protect a particular class of individual.

"Then it cites Halverson against Dall, a Washington

case, 574 Pacific 2nd 1190, where it was held that an ordinance identifying conditions and circumstances dangerous to health and safety of occupants of such building, the general public were designed to protect a specific class, the building occupants, as well as the general public.

"You have another Washington case, Campbell against the City of Bellview, 530 Pacific 2nd 234, a 1975 case. There the city inspector knew of a non-conforming under water lighting system and didn't do anything about it. He knew of its danger to neighbors and did nothing about it.

"The plaintiff's son was killed by an electrical malfunction that was caused by that. The City of Bellview was held libel because "these requirements were not only designed for the benefit of the general public, but more particularly for the benefit of those persons or class of persons residing within the ambit of the danger involved," the category into which the plaintiff and his neighbors fall; plaintiff having been a neighbor just as in this situation.

"I didn't frame my variation from the Plant [Platt] case as clearly as was in this quote I have just given, but it was exactly what I was driving at.

"And then, finally, although I agree with everybody in the Turner case, which, by the way, was the most recent D.C. Court of Appeals case which was mentioned by Ms.

Dorsch, and I agree with her that on its facts it is different but it is cited now at 532 Atlantic 2nd 662, and if I had time I wanted to bring it out here and read it.

"But suffice it to say that the specific distinction that I have made which I read from the Alaska case, Adams against State and the Washington case, Halverson against Dall and also from a New York case called Moteka against City of Amsterdam which is in 15 New York 2nd 134, 204 Northeast 2nd 635, a 1965 case, that very distinction is recognized in the language of the Court -- of our Court of Appeals in the Turner case.

"So, for those reasons I -- and if this perhaps most easily addresses Ms. Dorsch's motion for judgment on the case, I think that both our Court of Appeals and the other courts that I've cited here -- I might say that I wasted a lot of time because I found the Alaska case and the Washington case and the New York case before I found the citation to the Turner case.

"When I found the citation to the Turner case, the Court had cited the very cases I just found on my own, so it was unfortunate because it took me longer than it should have because I didn't have my law clerk.

"But anyway I find that there was a duty owed to these plaintiffs. Perhaps the easiest way to put it is that in the Plant [Platt] case it was not immediately foreseeable that Mr.

Plant [Platt], who, for all I know, he was in Omaha, Nebraska that day, you know, the day of the inspection, was a predictable plaintiff, nor was there any dealing between Mr. Plant [Platt] and the inspector with any kind of reliance on him.

"Whereas here if there is anybody who is a predictable victim of the tearing down of this house, it would be the people who live adjoining to it whose walls had gotten pinholes which had been reported to the inspector.

"Now, as far as this contributory negligence is concerned, I really think that that was a bit of an afterthought for the defense.

"You know, here is somebody who has complained to the District as they both pointed out. They are sitting there. She is not an engineer and she is not anything and she finds that after having pointed it out to the District and having had satisfactory performance of the District, she sees somebody on her land. The District didn't do anything about it. The construction crew and the architects and the engineers didn't raise something about it.

"I think it is a little harsh to say that that was contributory negligence on the part of this lady not to raise the roof in an hour or two hours or whatever it was that she had in between. I don't think that that is a serious issue here.

[APPENDIX G]

"The issue which I think is the most difficult here frankly is the proximate cause issue, and I have resolved that as best I can and that is my decision.

"And I'll now have to go over to do my criminal cases before we have a disaster over there. I hope the building won't fall down in my absence, but I would ask counsel and the parties to be back at 9:30 tomorrow and we will proceed with the rest of the case then. Thank you."

(Thereupon, the trial recessed at approximately 4:10 p.m.)

[APPENDIX H]

(See separate Appendix H)

[United States Patent #4,092,785 (Issued June 6, 1978)]

[APPENDIX I]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

C.A. No. 13973-84

EDWIN FORSMAN and SUSAN M. MILLER,
Plaintiffs
v.
THE DISTRICT OF COLUMBIA,
Defendant

Excerpts of the Proceedings of Wednesday, March 16, 1988.

Hon. Frank E. Schwelb, Trial Judge

Ruling on Evidential Matters Relative to the Patent

[Transcript at 682, lines 5-25
Transcript at 683, line 1]

* * *

Mr. Forsman: "Okay.

"The reason I'm asking about that is because I am in a position where in order to obtain a contract, out of necessity the contract would have to contain a clause that would say we can turn over these performances to you provided that you rebuild the machine.

"And I wanted to --"

The Court: "By the way, I think that contract ought to be marked as an exhibit, and it ought to be in the record so that if the appellate court thinks I was wrong in excluding it, it would have it there.

"So, I think it ought to be made a part of the record."

Mr. Forsman: "Okay. Thank you."

Ms. Dorsch: "I hope I objected to that, Your Honor. I can't remember it."

Mr. Forsman: "I think you did."

The Court: "Ma'am, you not only objected, but I excluded it. I want it made part of the record so that the appellate court can figure out what I excluded so they can determine if I excluded it correctly or incorrectly."

* * *

[APPENDIX J]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

C.A. No. 13973-84

EDWIN FORSMAN and SUSAN M. MILLER,
Plaintiffs
v.
THE DISTRICT OF COLUMBIA,
Defendant

Excerpts of the Proceedings of Wednesday, March 16, 1988.

Hon. Frank E. Schwelb, Trial Judge

Ruling on Damages

[Transcript at 731 through 747]

* * *

The Court: "Good morning again. Ladies and gentlemen, the Court has previously ruled on liability. It has now come my task to rule on damages.

"Before I get into specifics I would say that we should note that this event had a substantial and quite traumatic impact on these plaintiffs and their lives.

"To put it in the venacular, they put their eggs all into

one basket and the basket was broken, all the eggs too.

"The house they were living in was destroyed. It changed their life style. They had to move and they had to start from scratch.

"It is not a perfect analogy but it reminded me of a verse from "If" by Kipling, "If you can make one heap from all your winnings and risk them in one game of pitch and toss and lose and then begin again at the beginning and never breathe a word about your loss."

"Well, of course, they have breathed a word about their loss in this case and rightly so. They have done what they should do, to seek redress in the courts and that is perfectly legitimate.

"And I might say that there is a saying that a man who acts as his own lawyer has a fool for a client. I think that whatever everyone thinks of this case, I think they did a good job for themselves and argued their case very effectively.

"Now, one can't help but be sympathetic to somebody that this happened to, but I have to instruct the jury in jury cases that they've got to decide this case on the evidence and the law and not be moved by sympathy, prejudice or passion.

"And the Court is going to be guided by that instruction to the jury as an instruction to itself.

[APPENDIX J]

"I have always thought that the law is at its best when it provides rational solutions to problems between people and between people and their government.

"And sometimes the law doesn't seem rational because people just have a feeling, well, if only I didn't have all these rules we could show this or show that or show the other.

"But most of these rules, not all of them, are defensible in some logical way, and I think most of the rules that I am going to apply here are logical and defensible, and I think they are going to come up with a result that is fair to both sides.

"Let's take the various elements of damages of the plaintiffs' claim. The first one is essentially an interest in the house, which, to summarize it, they claim they contributed to the house and developed what I have characterized as kind of a kissing cousin to an equity in the house, and they claim the worth of it is $15,000, which was embodied in a promissory note which would have been payable conditionally upon the sale or financing or refinancing of the house.

"Now, the note, it is rather an unusual situation, because the note wasn't enforceable at the time because the house hadn't been refinanced or hadn't been sold. So it really provides me more with a reasonable estimate of what their kissing cousin to equity was.

[APPENDIX J]

"The plaintiff tried to prove that the loan had been approved, but at least the document they showed me didn't prove it. It was a pre-approval document.

"At the same time from the testimony, the Court has no reason to believe that the probability, I think that the probability is that refinancing or sale would have come about and that if it hadn't they could have continued to live there rent free.

"I do think that I have got to do some manipulation down and some manipulation up on that 15,000. I think I have to discount it to a limited extent because it was conditional, and you can never be certain that the conditions would be met, although there is a probability.

"At the same time on this particular aspect of it, which is a liquidated amount and a sort of contractual, I think this is the only area in which I think they are entitled to and fairness would give them a pre-judgment interest.

"I think it would be within my discretion to give pre-judgment interest in the worth of a kind of contractual arrangement which would be predicated on the equity in the house, and I am simply going to say that whatever discount you need to make for the uncertainty is offset by a fair assessment of that.

"So I am going to award them $15,000 on the interest in the house.

"As to the failure of proof that Stinson was penniless, I think his name was Stinson, the godfather. Everybody's got these great characterizations here. You've got a godfather, you've got an abracadabra lady and everything else here.

"I think that is basically irrelevant because this is not a suit on this conditional promissory note. It's a suit on the equity -- on the sort of equity that they have in the house of which that note is simply the best way to determine the value.

"I don't think that they have to prove here that they tried to sue Stinson and failed. So, I give them 15,000 on that.

"On the personal property, they have a claim of 15,551 or something like that. Now, there, I would make the following general finding: I thought the plaintiffs were basically credible witnesses, although they are litigants and like most, if not all litigants, give themselves the benefit of some doubt here, I think.

"Some of the items -- some of the evaluations, I think, were soft largely because he said that there was the replacement cost with some discount or the cost of a similar item with some discount for age.

"For example, on the furniture, he has a six-drawer bureau in there which he said was six or seven years old, $475. I mean, the fair market value of that, if you define fair market value the way Ms. Dorsch read from the case, in

general, it is probably somewhat high.

"You have these ceramic items which he said that he made, which the plaintiff said he made, the male plaintiff, Mr. Forsman, and he said similar ones were sold at sometime in Arizona. That is kind of soft.

"With due respect to him I do think this business of the tie clasps and the cuff links, it is possible, but I think it might be a little less than fair market value as to those. So I think that has to be discounted to some degree.

"At the same time, I have instead of making a separate category, I think there are some relatively minor items that they are talking about. There are some -- it is not all that minor, but it is somewhat minor given the circumstances, the loss of unemployment for a period of time.

"For example, Mrs. Forsman was employed by Mr. Forsman, so that anything that she wasn't going to get paid by him, he didn't have to pay her, so that is cancelled out. There was some loss, according to the deposition, which I think was a good recollection, they could have done some more on that house, but didn't.

"What I'm saying is that plus whatever might be allowable on the storage, which I think is minor, very minor. Most of that storage is not allowable in my judgment because you can't store all this for a period of time and -- plus various other miscellaneous items.

"What I am simply going to say, and it is rough justice, I can't be all that precise here, that the miscellaneous items amount to about the same thing as the amount I would discount the personal property. So I am going to leave the 15,500 be as not representing the personal property but representing the personal property plus the miscellaneous items, including lost earnings and all that.

"Now, the invention. This, of course, is the -- how would I put it? This is the fascinating feature of this case in terms of lawyer or judge. It is the thing that each plaintiff obviously cares most about. It is the centerpiece of the case, and I would be less than candid if I told you that I understood everything about it. I tried to read that description, and even if it was written by a lawyer, it is beyond me technically. I have never seen it. I wish I had seen a photograph of it. It must have been quite a fascinating contraption and maybe I will say that if it is ever reconstructed, you send me a photograph and I will look at it.

"But, anyway, the facts we have, and this is sort of wide open legally, I think, in a way it is wide open legally. What I have tried to do is apply my pension for trying to be rational in this when I don't think that there is anything recent in any of the authorities which fits here.

"What happens is in '77 or '78 he gets a patent on it,

and I don't know all that much about patent law but at least it suggest that it has some creative value, otherwise he couldn't have got a patent on it, it wouldn't have been patentable if it was not -- did not have some originality.

"After that he worked on it and spent a large amount of time and some money on developing this prototype.

"All I can say is that from anything I heard it was not quantified by the plaintiff as to how much time and money, probably because it wasn't capable of being quantified over that period of time, but what he did so is he estimated for me that he could have rebuilt it if he had the capital in about a year and at that time they were earning something in the neighborhood of $25,000, so that would have had to be given up to rebuild it.

"And what he's saying is basically is, well, I should at least be able to get the $10,000 it would have cost me for materials and so on, plus the $25,000 that I would have given up by the year of rebuilding.

"Now that, analytically, is not precisely on point here because that's replacement cost or replacement value or what it takes to replace it, and I cannot award that as a precise measure of it.

"But I will say that the reason I think it is relevant here is the following: He can't quantify what he did before, but what he did before, he didn't have the knowledge that he

already had over all of these years, so it makes sense to me that it would have taken less, this amount as replacement value here is less than the creative value that went into it in the first place.

"What I'm saying is that if you could quantify what he put in earlier, it would probably be more than $10,000 in the supplies and more than the $25,000 worth in it.

"But we don't know what it is, and I am not going to speculate what it was. So I'm going to say that the replacement value is helpful as a guide here because it is less than what he might be entitled to if he had better proof.

"Now, there is one other thing that during that year it would have earned something and he wouldn't have -- that doesn't -- that's not -- well, I think in this context, in this context I'm not going to say that it would have earned much, but it earned a few hundred dollars a year previously and here they had this contact with this maybe lady from Pennsylvania, whoever she is. I will refer to her as the "maybe lady." We've got a name for everybody else, so she can be the maybe lady.

"And I will say that I think there is a $1,000 allowable here, although none of the other earnings are allowable for other years for the reasons I've previously explained.

"So I am going to allow -- now, I'm going to deal with Ms. Dorsch's argument, which, if I read her argument

correctly, it is not exactly -- well, she said that they couldn't have sold it at the time, but she is not exactly saying that they shouldn't get anything for it, because that would obviously be unfair.

"But I should consider that, the fact that it wasn't saleable at that time as one of the factors that go into the equation.

"Let me ask you: Is that what your argument is basically or are you arguing that they should get nothing because it wasn't saleable at that time? I thought you were kind of giving it as a factor rather than saying zip."

Ms. Dorsch: "Well, I was, Your Honor."

The Court: "Okay. A factor."

Ms. Dorsch: "Because, if there was nobody willing to buy --"

The Court: "Are you saying that they should get nothing?"

Ms. Dorsch: "Right."

The Court: "Well, I don't think that's right. I think that the -- I mean, this is a rather unique item. This is a rather unique item which with some addition from him, but not somebody else. I think that the proof showed by a preponderance of the evidence that it was within reasonable reach of being a money-making item. I think it would be a -- to quote, to go back to literature a little bit, if the law says

that is worth nothing because he can't sell it at that moment, then to quote Mr. Bumble in Nicholas Nickleby, I guess it is or Oliver Twist, if the law says that, the law is a ass, an idiot. It's got to be worth something.

"And the best I can do here, ladies and gentlemen, is to say it's worth the 25 plus the 10 plus the 1, so I will give 36,000 there.

"Now, as to the lost earnings, I know that they have been -- Mrs. Forsman was crying here on the witness stand about that. I don't blame her.

"How can we prove it? It's terrible. It's unfair. How can we prove it when they have destroyed the machine?

"And I can see your point of view, but I would say a couple of reasons why you can't get anything on the lost earnings. First of all, the first time it was presented to me by Mr. Forsman, it was $26,000 a year he said it would earn, and he admits that in all but one-year he made more than that from his real estate earnings and then suddenly we got a little into it, all the possibilities and we were talking about 2.6 million if you had a hundred of these things, I think, earning profits. And I just don't think that the law contemplates things that are quite so hypothetical, in my opinion.

"Now, I mean, I have some sense of the frustration that the plaintiffs have about this.

They say it is not my fault I can't prove it. It's their fault that we can't prove it.

"And how can they take advantage of that? The judge just said the other day that there is a rule that you can't take advantage of your own wrongs. And it's true, so there is a logic to what you are saying.

"But at the same time to follow that argument, it would be open ended. It is their fault that you can't prove that it wasn't a billion, so maybe I will give you a billion, and the law does not operate that way and I don't think it can and keep awards within the bound of reason here.

"Now, the next thing I want to talk about is an interesting thought is this life style. Le me summarize to you the state of the law at the moment, as I understand it. I have checked it here.

"In the District of Columbia and in most other places, you can get damages for emotional distress, if it's accompanied by physical injury or in some instances where it is like you watch your children run over or something like that.

"Now, the injury doesn't have to be much. Even if it is only a scratch, for some reason or other, that is considered sufficient, and in some states, I think Alaska is the one that has crossed the threshold -- (to the law clerk) what?"

The Law Clerk: "Hawaii."

The Court: "Hawaii has crossed the threshold and says that you can get emotional distress if negligently inflicted.

"This kind of emotional distress, obviously, it is emotionally distressing if your house falls down, but they are talking something beyond that.

"They are talking that this has destroyed the way we live, the New Hampshire license plate, Breathe Free or Die."

The Reporter: "Live Free or Die."

The Court: "Live Free or Die.

"There is something on the Statue of Liberty about teaming hoards yearning to breathe free and all that, I am really going at it today."

(Laughter.)

The Court: "I am known for this kind of bluster, but in any event, I think we are at the borderline, the borderline of the law here, but what I'm going to do, I'm going to deny damages for emotional distress or change of life style or whatever it is on the theory that if a significant change of the law is to be made, it should be made by the appellate court that runs here.

"I am not usually that timid, but this would be a fairly significant step, although it may be time for that step.

"I will say this, however: If this case goes on appeal, if they appeal it, which I think they will, if there is a cross-

appeal by the plaintiffs, I will say this, that I'm not prepared to say that as an appellate judge I wouldn't recognize this as a legitimate element of damages in a case like this.

"I'm not ruling, because I don't think -- I think it would be a little beyond my responsibility as a trial judge to venture forth to that extent. I have done it occasionally, but I have been more certain in those cases that the appellate court would do it than I am in this case.

"But I will simply say that I am not sure that if this case were to come to me if and when I get upstairs, if it came to me, I might very well vote in favor of taking the law that far, because I'm not sure that I see the big difference between a scratch being enough and the fall down of a house or a patent. But I am not going to award it in this case.

"The business about the plaintiffs keep insisting that somehow or other what Mr. Brock paid them shouldn't come to the District's benefit, I mean, I have talked about this during the case and I am not going to talk about it further except to say that it is not so much set off but it is double recovery. You can't recover for the same thing twice and the law just doesn't permit it.

"I can't read something here, What's this?"

(Pause.)

The Court: "Oh. The prejudgment interest without -- I don't think it is barred in tort cases, but I think given all

the facts of this case and it being the exception rather than the rule, I think we ought to go with the rule in this case, except for the extent that I have dealt with it on the somewhat -- on the property interest in the house.

"Travel expenses back and forth to court. If somebody lives in Arizona and wants to sue in the D.C. courts, he can't get paid for travel.

"The counsel fees, I think they were prayed for in here, the earlier ones, and these people represented themselves as plaintiffs most of the time, and I don't think that this is a case that is egregious or anything that the District should have to pay anybody's counsel's fees.

"As far as the offset, for the reasons I have stated previously, I think it should be 25,000. Now, I swear that the amount that I am going to award now, which when you add this up and subtract the 25, it's pure coincidence that it is within $500 of what the plaintiffs' negotiating demand was. I swear it is a coincidence, but that is what it comes to.

"15,000 for the house; 15,000 for the belongings; plus lost earnings of 500, 30, 500; 35,000 for the machine, which is 65,500; one year -- 1,000 lost profit, 66,500; subtract 25, 41,500; $41,500, which the Court will simply grant legal rate of interest from this date on, and the plaintiffs shall recover their taxable costs from the defendant. That is the judgment of the Court.

"Okay. Thank you. It was a long case. It was very interesting. I am sure that if and when I get up there I will be interested to see what some of my colleagues are doing with it on these various issues, but I enjoyed working with all of you."

Ms. Dorsch: "Thank you, Your Honor."

Mr. Forsman: "Thank you, Your Honor."

Mrs. Forsman: "Thank you, Your Honor."

The Court: "I guess I should make one other comment in substantiation of this and that is that I basically believed the testimony of all witnesses I heard here, and I believed the plaintiff's testimony essentially about the kind of work he was doing with this machine.

"I don't necessarily agree with all the inferences he wants me to draw about how much everybody would have paid if, but I didn't allow for that.

"Okay. Thank you. Have a safe trip home, ladies and gentlemen.

"Ms. Dorsch, I'm sure I will see you around someplace. Don't get mad at me if I tweaked you a little bit. I didn't mean any harm."

(Thereupon, the trial concluded at approximately 12:25 p.m.)

[APPENDIX K]

Title 5A, D.C.M.R. §109.7 (1977)

(1) Before a permit to demolish a building is issued, all persons or municipal departments having electric, gas, telephone, water or sewer connections in the building shall be advised by the Director to take the necessary actions to insure that their respective service connections and appurtenant equipment are removed, and that connections are cut off at the street or otherwise safeguarded. The application for permit shall include an adequate description of the structure to be razed and the method to be used in razing. The owner shall also, at the time such application is submitted, furnish evidence satisfactory to the Director, in the form of a policy or certificate of insurance issued by an insurance company authorized to do business in the District of Columbia, showing that the operations proposed to be conducted by or on behalf of such owner under the authority of the permit for which application is made will be covered by public liability and property damage insurance for the full period of the permit and any extension thereof, such insurance to be cancelleable only after thirty days following delivery to the Director of a written notice of intent to cancel, and to provide a minimum limit of liability of $100,000 for bodily injury or death of any one person in any one accident, and $100,000 property damage in any one accident. A

permit issued under the authority of this section shall be valid only for such period of time as the work to be performed under such permit is covered by insurance at least in the amounts required by this section. The foregoing requirement respecting insurance shall not be applicable to the razing of 1. any accessory building 500 square feet or less in area and not more than one story in height, wholly detached from any other building on the same or adjoining premises; 2. any accessory building ordered removed by the Mayor of the District of Columbia under authority of law; or 3. any building removed by the District upon the failure of the owner to remove the same after having been ordered so to do by the said Mayor.

(2) Each permit to raze a building shall name the owner of the property to be razed and the person performing the razing work for or on behalf of such owner, and such permit shall be valid only so long as the razing work authorized by is actually performed by or under the supervision of the person named thereon as being the person that perform such work. It shall be a violation of these regulations for any person to perform work in connection with the razing of a building under the purported authority of a permit which does not name him as the person to perform such work.

[APPENDIX L]

AMENDMENT IV TO THE UNITED STATES CONSTITUTION

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[APPENDIX M]

AMENDMENT VII TO THE UNITED STATES CONSTITUTION

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

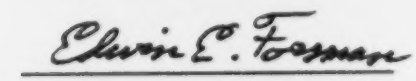
[APPENDIX N]

THE UNITED STATES CONSTITUTION, ARTICLE I, Section 8, (8)

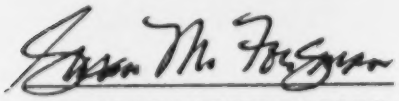
To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

DATED: May 22, 1991

Respectfully submitted,



EDWIN E. FORSMAN



SUSAN M. FORSMAN
Pro Se

4436 West Taro Drive
Glendale, Arizona 85308
602-581-2837